

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELIJAH RAY RICH,

Petitioner,

v.

WARDEN J. MACOMBER,

Respondent.

Case No. CV 16-1106 SJO(JC)

ORDER (1) SUMMARILY
DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS AND ACTION
WITHOUT PREJUDICE; AND
(2) DIRECTING CLERK TO FILE
PETITION AS MOTION TO AMEND
PETITION FOR WRIT OF HABEAS
CORPUS IN CASE NO. 16-894

On February 17, 2016, petitioner Elijah Ray Rich (“petitioner”), a state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus by a Person in State Custody (“Second Petition”) in the instant action (“Second Federal Action”).¹ The Second Federal Action is the second habeas action which petitioner

¹“Upon the consent of the parties,” a magistrate judge “may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case.” 28 U.S.C. § 636(c)(1). Here, petitioner is the only “party” to the proceeding and has consented to the jurisdiction of the undersigned U.S. Magistrate Judge. Respondent has not yet been served with the Petition and therefore is not a party to this action. See, e.g., Travelers Cas. & Sur. Co. of Am. v. Brenneke, 551 F.3d 1132, 1135 (9th Cir. 2009) (“A federal court is without personal jurisdiction over a defendant unless the defendant has been served in accordance with Fed. R. Civ. P. 4.” (internal quotation marks omitted)). Thus, all parties have consented pursuant to

(continued...)

1 has filed in this Court which challenges a 2013 judgment in Los Angeles County
 2 Superior Court Case No. MA05413 (“State Case”). The first such action (“First
 3 Federal Action”) in which the operative pleading is also a Petition for Writ of
 4 Habeas Corpus by a Person in State Custody (“First Petition”) is currently pending
 5 before this Court in the similarly entitled case: *Elijah Ray Rich v. Warden J.*
 6 *Macomber*, No. CV 16-894 SJO(JC). The First Petition asserts a Sixth Amendment
 7 claim predicated upon the denial of two *Faretta*² motions in the State Case. The
 8 Second Petition challenges the legality of the sentence imposed in the State Case.

9 In cases in which a federal habeas petitioner already has pending a federal
 10 habeas petition pertaining to the same state court conviction in the same court,
 11 dismissal is appropriate because the maintenance of a duplicative action serves no
 12 legitimate purpose. *See Heidinger v. Yates*, 2007 WL 1711776 (N.D. Cal. June 13,
 13 2007) (dismissing habeas petition because petitioner already had habeas petition
 14 pertaining to same state court conviction pending in same court); *Smith v.*
 15 *Louisiana*, 2006 WL 1985467 (E.D. La. June 7, 2006) (even if construed as habeas
 16 petition, filing challenging convictions should be dismissed as duplicative since
 17 petitioner already has pending in same court a habeas petition involving same
 18 convictions). If petitioner is entitled to any habeas relief relative to the judgment in
 19 the State Case, the Court can afford such relief in the First Federal Action.
 20 Therefore, maintenance of the present, apparently duplicative action would serve
 21 no legitimate purpose.

22
 23
 24 ¹(...continued)

25 28 § 636(c)(1). *See Wilhelm v. Rotman*, 680 F.3d 1113, 1118–21 & n.3 (9th Cir. 2012) (holding
 26 that magistrate judge had jurisdiction to sua sponte dismiss prisoner’s lawsuit under 42 U.S.C.
 27 § 1983 for failure to state claim because prisoner consented and was only party to action); *Carter*
 28 *v. Valenzuela*, 2012 WL 2710876, at *1 n.3 (C.D. Cal. July 9, 2012) (after *Wilhelm*, finding that
 magistrate judge had authority to deny successive habeas petition when petitioner had consented
 and respondent had not yet been served with petition).

²*Faretta v. California*, 422 U.S. 806 (1975).

DATED: February 23, 2016

Honorable Jacqueline Chooljian
UNITED STATES MAGISTRATE JUDGE